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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,067	03/23/2000	Ronald O. Bubar	4645/31	1606

7590 12/17/2001

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 12/17/2001

16

Please find below and/or attached an Office communication concerning this application or proceeding.

8W-66

Office Action Summary	Application No. 09/535,067	Applicant(s) Bubar
	Examiner Lien Tran	Art Unit 1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on Nov. 28, 2001.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 12-20 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 12-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- | | |
|--|--|
| 15) <input type="checkbox"/> Notice of References Cited (PTO-892) | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 20) <input type="checkbox"/> Other: _____ |

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1. Claims 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paulucci (4842882) for the same reason set forth in paragraph 7 of paper no. 3.
2. In the preliminary response filed Nov. 28, 2001, applicant submits a declaration to show that the claimed product is different from the Paulucci product. The declaration is not found to be convincing to define over the prior art for the following reason. The declaration shows two photographs of two different pizza crusts. Exhibit 1 is a laminated crust as defined by claims 12-20 and exhibit 2 is a pizza crust produced in a pressed crust process like that described in the Paulucci patent. It is not clear what applicant means by pressed crust process. The declaration does not state how the pizza crust of exhibit 2 is made. In order to have a fair comparison against the prior art, the method as described in the prior art has to be followed precisely. It is not known from the declaration if the pizza crust of exhibit 2 is made exactly in accordance with the method as set forth in example 6 of the Paulucci patent. Unless the crust is made exactly by the steps as set forth in example 6 of the Paulucci patent, the showing is not a fair comparison. Paulucci discloses in example 6, the crust is a laminated crust which is characterized by a crisp upper and bottom surface with a flaky airy interior. This description is contrary to the showing of the declaration. Thus, without knowing how the crust of exhibit 2 is made, it can not be concluded that such crust is indeed the product as set forth in example 6 of the Paulucci patent. The declaration also states Luigino's Inc does not use the earlier 882 method to produce its line of frozen pizzas. Whether such method is used or not used to produce the frozen pizzas is not a factor in determining the patentability of the instant claimed product.

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3. Applicant's arguments filed Nov. 28, 2001 have been fully considered but they are not persuasive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

December 14, 2001


LIEN TRAN
PRIMARY EXAMINER
